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SENSITIVE
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TAGS: EINV EFIN ETRD ECON KPRV EIND AG
SUBJECT: FIND A PARTNER: ALGERIA'S NEW INVESTMENT RULES

REF: A. 08 ALGIERS 1003
¶B. 08 ALGIERS 1172

¶1. (SBU) SUMMARY: Algeria has implemented policies that require a majority stake be held by Algerian interests in all new investments in the country, and a minimum 30-percent stake in import businesses. The policies have taken shape through a series of written instructions and guidance sent from the prime minister to various government organs since July 2008, when President Bouteflika lashed out against foreign investors for reaping profits from Algeria's natural resources and markets without reinvesting in the country (ref A). The rules also require foreign investors to maintain the balance of their earnings in Algeria during the life of the investment, and to use Algerian banks for any financing. In many ways these rules match those imposed in 2006 on investors in the hydrocarbons sector, except that private Algerian businesses may be tapped as partners for projects outside of oil and gas development. Leading Algerian business groups favor the rules, and both they and the government are quick to say that the rules do not signal a retreat from capitalism, but instead represent a more sound and deliberate industrial strategy. We have yet to see examples of the rules put into practice, and we have been assured that the rules will not be applied retroactively except for import businesses. While some officials maintain that the rules are temporary, their scope and intent suggest that they should be considered the new Algerian investment regime for at least the near future. END SUMMARY.

FOUR NEW RULES FOR AN OLD-SCHOOL ECONOMY

¶2. (SBU) Between July and December 2008, Prime Minister Ahmed Ouyahia issued a series of written instructions and guidance to various government organs outlining a new foreign investment framework for Algeria. Initially described as a "national doctrine" defined by the president, the guidance established new rules for foreign investment in Algeria, whether in the form of partnership, direct foreign investment or privatization. The original guidance envisioned rules that would apply to foreign investors contributing at least 30 percent of the capital to a project, with a maximum capital contribution of 49 percent. Under the guidelines and the rules that followed, "Algerian shareholders" would always maintain a majority stake in new foreign investment projects.

¶3. (SBU) Ouyahia issued four orders in a circular to

government authorities dated December 21, 2008. The first requires all foreign investments in Algeria to include one or more Algerian partners who contribute a majority of the project's capital. This rule applies to investments involving either a single foreign entity or a partnership, and envisions the likelihood that multiple Algerian shareholders would be needed in order to constitute a majority of a project's capital, thus making the foreign partner "the first among actors in terms of shareholder stakes." The rule applies to "all sectors of activity, including finance and the various branches of the energy sector."

¶4. (SBU) The second rule requires investments driven by foreign companies to maintain a positive balance of foreign currency in Algeria for the life of the project. This is followed by a third rule that requires any tax breaks, customs reductions or other financial incentives utilized to establish a foreign investment to be deducted before any dividends may be repatriated out of the country. The fourth rule requires that any financing needed for a foreign investment must be obtained from domestic banks.

30-PERCENT RULE FOR IMPORTERS

¶5. (SBU) To address problems associated with what Ouyahia described in his circulars as a 300-percent increase in the cost of imports over the last six years, the prime minister issued a separate set of orders on December 22, 2008, that apply specifically to import companies. Under these rules,

any foreign-owned import company established after March 1, 2009, must have at least 30 percent of its capital owned by Algerian interests, which may be either individuals or businesses. In addition, all foreign companies already operating import businesses in Algeria must re-capitalize with a 30-percent Algerian stake by September 30, 2009.

JUSTIFICATION: REAL THREATS TO THE ECONOMY

¶6. (SBU) In the December 21 circular addressed to various high-level members of government and managers of public enterprises, Ouyahia outlined a series of "real threats" faced by the Algerian economy, even as he stated that Algeria's financial position vis-a-vis the global economic crisis would remain positive for at least five years. The identified threats to Algeria's economy included skyrocketing import costs and capital flight that Ouyahi said was permitted under a particularly lax foreign investment policy. He also noted a decline in national production caused by a number of factors including irrational tariffs that favored the importation of finished goods over raw materials, credit rules that favored trade over production, and fraud committed at the customs, tax and social levels. He stressed the necessity to fight waste and fraud along with the need to create dynamic advantages for "productive investments," the creation of jobs and the diversification of government revenue streams.

EFFECTS ON U.S. BUSINESSES

¶7. (SBU) We have no way yet to gauge the effect the general investment rules will have on U.S. business relations with Algeria. Most U.S.-based investment here has been in the hydrocarbons sector, which is already subject to similar restrictions on foreign ownership of joint ventures. It seems clear, however, that two major investments finalized in 2008 by U.S.-based firms, the GE Hamma desalination joint venture in Algiers and General Cable's acquisition of a state-owned industrial cable plant in Biskra, would have been affected had these rules been in effect. In that regard, the original written guidance to government agencies from

Ouyahia's office and promises made to us by both government officials and business leaders close to decisionmakers indicate that the 49-percent rule will not be applied retroactively.

¶8. (SBU) On the import side, there are few if any U.S.-based trading companies in Algeria. American producers generally establish relationships with local distributors for the sales of U.S.-made products. A local newspaper recently reported that of the 25,500 import-export businesses throughout Algeria, some 1,600 are foreign-owned. Syrian, French and Chinese companies make up almost half of the foreign companies that operate trading businesses here, and French diplomats tell us their constituents are very concerned by the rule requiring them to acquire a 30-percent Algerian partner by October.

COMMENT

¶9. (SBU) Discussion of a new foreign investment policy for Algeria began last summer when the president blasted foreign firms and called his own government's investment policy "a failure." Some of the elements of Prime Minister Ouyahia's rules were floated over the months that followed, both to galvanize support among the people and to test the waters for effect. But, because the rules were not officially published, confusion has reigned regarding what percentages of Algerian partnership were required for various sectors and if the Algerian stakeholder could be a private business versus a state-owned enterprise. In fact, our business delegations and official visitors have received conflicting information from various ministers regarding the impact and scope of the rules.

¶10. (SBU) In recent weeks the rules seem to have reached a

wider audience, and both government and business leaders have moved to assure us that Algeria is not trying to close the door to foreign investment but is simply seeking to establish more strategic partnerships. The director of the MFA's economic bureau suggested to us this week that the rules may be temporary -- a claim we heard during high-level visits in the fall of 2008 -- and intended to implement a "small pause" in what he called "uncontrolled" foreign investment here. The scope and nature of the rules, designed essentially to develop an Algerian investor class, nonetheless suggest a longer-term commitment. The use of circulars and orders to government agencies rather than decrees that have the weight of law has given the prime minister some flexibility in this regard: should the rules prove ineffective or politically unsound, they can just fade away. But should the government find them useful and effective in leveraging Algerian ownership in investments here, the rules can simply stay in effect indefinitely.
PEARCE